

**PLACER COUNTY SUPERIOR COURT  
CIVIL LAW AND MOTION TENTATIVE RULINGS  
FRIDAY, JUNE 19, 2020, AT 8:30 A.M.**

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These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, June 19, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, June 18, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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Except as otherwise noted, these tentative rulings are issued by **COMMISSIONER GLENN M. HOLLEY** and if oral argument is requested, it will be heard in Department 31, located at 10820 Justice Center Drive, Roseville, California.

**PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**1. M-CV-0019965 Gilman, Kevan H. vs. Sweeney, Mike, et al**

The motion to tax costs and fees is continued to July 24, 2020, to be heard by Commissioner Michael A. Jacques. The date, time and department for oral argument on the motion shall be set forth in the tentative ruling posted in connection with the continued hearing date.

**2. M-CV-0072615Z Toor Village, LLC vs. Fatemeh Hajihosseini, D.D.S.**

The motion for attorneys' fees is continued to July 24, 2020, at 8:30 a.m. in a department to be determined.

**3. M-CV-0073073 Discover Bank vs. Portice, Jayden C.**

The motion to enter judgment is dropped as no moving papers were filed with the court.

**4. M-CV-0075199 Barclays Bank Delaware vs. Cardin, Mark**

Plaintiff's motion to deem requests for admissions admitted is denied. Defendant has not appeared in this action. Plaintiff fails to demonstrate that service of the motion by

mail is sufficient in these circumstances and the court declines to issue discovery orders with respect to a party who has not yet appeared.

**5. S-CV-0036067 Fang, Fujian, et al vs. Wilkens, Timothy, et al**

The motion to be relieved as counsel is granted, effective upon the filing of proof of service of the court's signed order after hearing on plaintiffs.

**6. S-CV-0039929 Jarvis, Todd Henry vs. Calder, Robin Elizabeth**

Plaintiff's motion to quash and/or modify trial subpoenas is denied as moot in light of defendant's representation that the subject subpoenas have been withdrawn.

**7. S-CV-0039412 Thornber, Sally, et al vs. Colby, Diane**

This tentative ruling is issued by the Honorable Steven J. Howell. If oral argument is requested it shall be heard on **Wednesday, June 24, 2020 at 10:30 a.m. in Dept. 30.**

Motion to Set Aside Judgment

Defendant Diane Colby moves to set aside the judgment in this action pursuant to Federal Rules of Civil Procedure, Rule 60(b).

The motion is denied. Defendant fails to establish that the Federal Rules of Civil Procedure apply in this state court action. *See Ticconi v. Blue Shield of Cal. Life & Health Ins.* (2008) 160 Cal.App.4th 528, 546. Even if defendant had properly moved for the requested relief under California procedural law, she does not establish grounds to vacate the judgment, and the motion is untimely as it was filed more than 15 days after service upon defendant of notice of entry of judgment. See Code Civ. Proc. §§ 663, 663a(a).

**8. S-CV-0040937 Chittenden, Robert N. vs. Barbara C. Pascoe, Co-Trustee**

The motions for summary judgment and motions to seal are dropped in light of the notice of settlement of entire case filed March 25, 2020.

**9. S-CV-0041099 Sierra Northwest Properties, LLC vs. Kila Tahoe, LLC, et al**

Motion to Set Aside and Vacate Judgment

On February 25, 2020, the court issued a ruling on submitted matters granting defendant and cross-complainant Kila Tahoe, LLC's ("Kila's") motion to set aside and vacate judgment and enter another and different judgment. The ruling directed Kila to prepare a proposed modified ruling on submitted matter with respect to plaintiff and cross-defendant Sierra Northwest Properties, LLC's ("SNP's") prior motion to enforce, as well as a proposed judgment thereon. The court's ruling did not provide further

direction on the contents of the proposed judgment. Subsequent to this action, on March 16, 2020, the court entered a modified ruling on submitted matter and judgment thereon.

SNP now moves to vacate the March 16, 2020 judgment (“the Judgment”) pursuant to Code of Civil Procedure section 663. In its reply brief, SNP also raises a new argument, that the court has inherent authority to vacate the Judgment as void. The motion was continued to permit Kila the opportunity to reply to this argument. If oral argument is requested on this motion, Kila will also be permitted to raise additional arguments as to this issue at the time of the hearing.

Code of Civil Procedure section 663 states:

A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment:

1. Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected.
2. A judgment or decree not consistent with or not supported by the special verdict.

It has repeatedly been held that in granting a motion under Code of Procedure section 663, the court’s order must include an order for entry of a new and different judgment. *Ramirez v. Moran* (1988) 201 Cal.App.3d 431, 435; *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1260; *Copley v. Copley* (1981) 126 Cal.App.3d 248, 299. For the purpose of the current motion, SNP does not propose that any new and different judgment be entered. Instead SNP argues that entry of any judgment at this juncture is not appropriate, given the procedural posture of this case, and because there would be no matters left undetermined if the Judgment was vacated. *Dolan v. Superior Court* (1920) 47 Cal.App. 235, 241. SNP’s argument does carry some weight in light of the fact that if its prior motion to enforce had been denied at the outset, no judgment would have entered, yet the case would not have been left unresolved. Other cases have noted that Section 663 provides a mechanism to substitute a “proper judgment” or the judgment “that should have been given” in place of the judgment that was entered. *See Potter v. Pigg* (1917) 35 Cal.App. 707, 708; *Akley v. Bassett* (1922) 189 Cal. 625, 635. In this case, in lieu of granting SNP’s motion to enforce, and entering judgment thereon under Code of Civil Procedure section 664.6, the court would have simply denied the motion with no judgment being entered.

Nevertheless, the court need not determine whether the plain language of Code of Civil Procedure section 663 may be ignored under these circumstance, as it concludes that the motion must be granted on the grounds that the Judgment is void.

Code of Civil Procedure section 473(d) states:

The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

This action was dismissed by stipulation of the parties and order thereon, filed February 14, 2019. A voluntary dismissal of an entire action deprives the court of both subject matter and personal jurisdiction. *Sanabria v. Embrey* (2001) 92 Cal.App.4th 422, 425. “[W]here the plaintiff has filed a voluntary dismissal of an action ..., the court is without jurisdiction to act further ..., and any subsequent orders of the court are simply void.” *Paniagua v. Orange County Fire Auth.* (2007) 149 Cal.App.4th 83, 89. An exception exists under Code of Civil Procedure section 664.6, which permits the court to “retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement” if requested by the parties, and to “enter judgment pursuant to the terms of the settlement.”

Kila notes that in assessing a motion under Section 664.6, the court is empowered to determine and interpret disputed factual issues, and may determine that the settlement agreement is enforceable or unenforceable. While the court agrees with these statements, none of the cases cited by Kila involved entry of a judgment pursuant to Section 664.6 on the court’s determination that the settlement agreement was unenforceable.

The Judgment entered by the court is not a “judgment pursuant to the terms of the settlement”, as it does more than simply reduce the parties’ stipulated settlement to a judgment. *See Kilpatrick v. Beebe* (1990) 219 Cal.App.3d 1527, 1529. It therefore exceeds the court’s limited jurisdiction afforded by Section 664.6. As this action was terminated, the court lacked subject matter jurisdiction over the case except as expressly reserved in conformance with the statute. *See Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1007-1008; *Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 204. The court finds that the Judgment was not in conformance with the statute, and is therefore void.

Based on the foregoing, SNP’s motion is granted. The Judgment entered March 16, 2020, is hereby vacated.

#### Motion to Strike Memorandum of Costs

Sierra Northwest Properties, LLC’s motion to strike memorandum of costs is **continued to July 24, 2020**, to be heard in conjunction with Kila Tahoe, LLC’s motion for attorneys’ fees.

10. **S-CV-0041389 Davis, Whitey, et al vs. Harmatz, Joshua Weiss, et al**

Motion for Summary Judgment

Rulings on Objections to Evidence and Request for Judicial Notice

Plaintiffs' request for judicial notice is denied as to Exhibits C and E, and otherwise granted.

Defendant's objections to evidence are ruled on as follows: Objection No. 5 is sustained. The remaining objections are overruled.

Ruling on Motion for Summary Judgment

Defendant Janice McNally, individually and dba Jan Mac Appraisers ("McNally") moves for summary judgment as to plaintiffs' cause of action for negligent misrepresentation.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

Plaintiffs purchased real property in Newcastle ("the Property") in or about May 2017. (SSUMF 4.) In connection with the purchase, McNally prepared an appraisal report on or about June 12, 2017. (SSUMF 5.) The appraisal report states that its purpose "is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property." (SSUMF 6.) The appraisal report identifies the "intended user" of the report as "lender/client", and "lender/client" as Provident Savings Bank, F.S.B. (SSUMF 7, 9.) The appraisal report identifies plaintiffs as the borrowers. (SSUMF 7.) The appraisal report states that the intended use of the report is "for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction." (SSUMF 8.) The appraisal report further states that it may be used by Provident Savings Bank and HUD/FHA, to assist in evaluating the property as security for loan purposes, and that "any other use of the report without written permission of the appraiser is prohibited..." (SSUMF 11.) McNally asserts that she did not send the appraisal report to plaintiffs, did not know or intend that it would be sent to plaintiffs, and did not know or intend that plaintiffs would rely on it. (SSUMF 17.)

For the purpose of their negligent misrepresentation claim, plaintiffs allege that they relied on McNally's certification in the appraisal report that a water well existed on the Property, and that the Property otherwise met HUD's standards and requirements. (FAC, ¶¶ 111, 112.) Plaintiffs allege that McNally failed to disclose that the Property utilized a water purification system, and failed to otherwise assess water quality. (FAC,

¶ 112.) McNally asserts that she had no duty to visually confirm the existence of specific water sources or underground waste water treatment structures, but otherwise that she had reasonable grounds to believe that the Property contained both a well and a septic system. Finally, McNally asserts that plaintiffs did not rely on the appraisal in deciding to purchase the Property because they entered into the purchase contract before the appraisal was prepared.

In support of the argument that she owed no duty to plaintiffs, McNally cites *Bily v. Arther Young & Co.* (1992) 3 Cal.4th 370, in which the California Supreme Court held that professionals do not owe a duty to third parties unless there is an intent to benefit that third party. In *Soderberg v. McKinney* (1996) 44 Cal.App.4th 1760, *Willemsen v. Mitrosilis* (2014) 230 Cal.App.4th 622, and *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, appellate courts confirmed that the holding in *Bily* extended to appraisers. In *Willemsen v. Mitrosilis*, summary judgment in favor of the appraiser defendants was upheld where there was no evidence that the appraiser defendants manifested an intent to supply information for plaintiff's use and the purchase agreement contained no appraisal contingency. *Willemsen v. Mitrosilis*, *supra*, 230 Cal.App.4th at 630. The court in *Tindell v. Murphy* reached the same conclusion where no representations were made to plaintiffs and the alleged misrepresentations occurred after plaintiffs signed a binding purchase agreement. *Tindell v. Murphy*, *supra*, 22 Cal.App.5th at 1252. However in *Soderberg v. McKinney*, summary judgment for the appraiser was properly denied where evidence was submitted showing that the appraiser knew that a particular group or class of persons to which plaintiffs belonged would rely on his report in the course of investing in a deed of trust. *Soderberg v. McKinney*, *supra*, 44 Cal.App.4th at 1771.

Liability may be appropriate where the defendant "knows with substantial certainty that plaintiff, or the particular class of persons to which plaintiff belongs, will rely on the representation in the course of the transaction." *Bily v. Arther Young & Co.*, *supra*, 3 Cal.4th at 414. In opposition to the motion, plaintiffs note that McNally herself certified within the appraisal report that:

The borrower, another lender at the request of the borrower, the mortgages or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

(McNally decl., Exh. 1.) Based on this evidence, plaintiffs raise a triable issue of material fact as to whether McNally was aware that plaintiffs would rely on her appraisal report, and intended that plaintiffs could rely on her appraisal report. In addition, based on the evidence submitted in the opposition, plaintiffs raise a triable issue of fact regarding whether the representations set forth in the appraisal report violated McNally's obligations and duties as an appraiser as more particularly described in Handbook 4000.1. (Pltf. SSUMF 1.) Finally, plaintiffs raise a triable issue of fact regarding their actual reliance on the appraisal report in deciding whether to go through with the purchase. (Pltf. SSUMF 2, 3, 5, 7.)

Based on the foregoing, McNally's motion for summary judgment is denied.

**11. S-CV-0041531 Stockman, Joshua vs. Walmart Inc.**

The motion for partial judgment on the pleadings was withdrawn by the moving party.

**12. S-CV-0041537 Samborsky, Renee vs. First Technology Federal Credit Union**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested it shall be heard at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to be Relieved as Counsel

Edwin Aiwarzian and Lawyers for Justice, PC (collectively "Lawyers for Justice"), attorneys for plaintiffs in this class action case, move to be relieved as counsel.

This motion follows defendants' filing of a notice of settlement of entire case on February 24, 2020, which indicates an unconditional settlement of the entire case requiring a request for dismissal be filed within 45 days. It is apparent from the moving papers that Lawyers for Justice is not in favor of the settlement agreement, inasmuch as it moves for relief in advance of plaintiffs seeking either approval of the settlement, or dismissal of the action. Lawyers for Justice references "concerns" developed after consulting with ethics counsel, but does not specify the nature of the concerns, or whether it believes an actual or potential conflict or breach of the attorneys' duties exists in this case. Lawyers for Justice also notes a breakdown of the attorney-client relationship, and "issues regarding breach of retention agreement."

In a class action, both the class representatives and counsel owe a fiduciary duty to the class. *City of San Jose v. Superior Court* (1974) 12 Cal. 3d 447, 464; *Janik v. Rudy, Exelrod & Zieff* (2004) 119 Cal.App.4th 930, 938. The trial court also has a duty to protect members of the class. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. As stated in *Barboza*:

[U]nlike in situations in which the litigant has retained an attorney to conduct litigation, where the litigant and the attorney agree upon the scope of the engagement, and their rights and duties are governed by their agreement, in class actions, where there is no agreement with absentee class members to define the scope of the engagement, class counsel must represent all of the absent class members' interests throughout the litigation to the extent there are class issues, and it is the duty of the trial court to ensure at every stage of the proceeding that counsel is adequately representing those interests.

*Id.* at 546-547.

The moving papers do not describe how relieving Lawyers for Justice as counsel might impact the interests of absent class members. Indeed, permitting Lawyers for Justice to be relieved as counsel would apparently leave the named plaintiffs *in pro per*, and unable to represent other class members. It is also unclear how the court can protect the interests of the absent class members under these circumstances. The court declines to grant the current motion unless and until these issues are adequately addressed.

In light of the foregoing, the motion to be relieved as counsel is denied without prejudice.

**13. S-CV-0041645 Krake, Denise, et al vs. Central Valley Diner, Inc.**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion for Final Approval of Class Action Settlement

Plaintiffs' motion for final approval of class action settlement is **continued to September 18, 2020, at 8:30 a.m. in Department 3.**

California Rules of Court, rule 3.769(f) states:

If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

In this case, the notice of class action settlement sent to 6341 potential class members contains an incorrect date and incorrect location for the final approval hearing. (Declaration of Nathalie Hernandez ("Hernandez decl."), ¶ 7, Exh. A at p.8, ¶ 17.) The notice therefore does not comply with the court's prior ruling, and does not provide correct information to the class members regarding how to appear at the final approval hearing.

In addition, while plaintiffs tout an over 99% participation rate in the settlement, the declaration of Nathalie Hernandez reveals that 1100 notice packets (nearly 20% of the total) were returned as undeliverable, with no forwarding address. (Hernandez decl., ¶10.) Although skip tracing was performed, no updated addresses were found. (Id.) The notice packets were then resent to these 1100 class members at the same addresses. At the time that plaintiffs' motion was filed, the deadline for these class members to respond had not yet passed. (Id., ¶ 13.)

The Stipulation of Class Action Settlement and Release of Claims ("Stipulation of Settlement") requires more than skip tracing if notice packets are returned as



undeliverable. (Declaration of Jean-Claude Lapuyade (“Lapuyade decl.”), ¶ 3, Exh. A at p. 20, ¶K(4). ) The Settlement Administrator must attempt to determine a correct address by skip tracing “or other search using the name, address and/or Social Security number of the Settlement Class Member involved”, and if the persons are currently employed by defendants, the Settlement Administrator must notify defendants in an effort to obtain corrected addresses. (Id.) The declaration of Nathalie Hernandez does not describe any effort to locate the 1100 class members by a method other than skip tracing, and does not contain information regarding whether any of the 1100 class members are current employees of defendants. In light of the failure to show compliance with the terms of the Stipulation of Settlement, and the significant number of class members who did not receive notice of the settlement, plaintiffs fail to demonstrate that notice to the class was adequate.

The motion shall be continued in light of the foregoing issues. In advance of the continued hearing date, plaintiffs shall (1) provide notice to all class members of the continued hearing date and correct location; and (2) renew attempts to locate correct addresses for the 1100 class members whose notice packets were returned as undeliverable in compliance with the terms of the Stipulation of Settlement. Plaintiffs shall file and serve any supplemental briefing or declarations at least 16 court days prior to the continued hearing date.

#### Motion for Class Counsel Award and Class Representative Service Award

Plaintiffs’ motion for class counsel award and class representative service award is **continued to September 18, 2020, at 8:30 a.m. in Department 3**, to be heard in conjunction with plaintiffs’ motion for final approval of class action settlement.

#### **14. S-CV-0042579 Magat, Salud vs. Medical Care Professionals**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

#### Motion for Final Approval of Class Action Settlement

Plaintiff’s motion for final approval of class action settlement is granted.

The court has broad discretion to determine whether a settlement is fair, adequate, and reasonable. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. When reviewing the fairness of the settlement, the court is to give due regard to the parties’ agreement, ensuring that the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. A presumption of fairness exists where: (1) the settlement was reached through arms-length bargaining;

(2) the investigation and discovery were sufficient to allow class counsel and the court to act intelligently; (3) class counsel is experienced in similar litigation; and (4) there is a small percentage of objectors. *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at 245. The court has carefully reviewed and considered the settlement and release agreement and plaintiff's moving papers filed in connection with the motions. The court determines a sufficient showing has been made that the settlement is fair, adequate, and reasonable.

The court grants final approval of the class action settlement agreement. The court grants final approval of (1) class counsel attorneys' fees in the amount of \$140,000 and costs in the amount of \$13,287.97; (2) administration costs of \$5,000 payable to settlement administrator Simpluris, Inc.; and (3) a class representative service award in the amount of \$15,000 payable to plaintiff Salud Magat. The court incorporates by reference the findings and orders as outlined by the plaintiff in the proposed order. The court retains jurisdiction over the parties to enforce the terms of the judgment. Cal. R. Ct., rule 3.769(h).

**15. S-CV-0042799 Wright, Shirley, et al vs. Likely Land & Livestock Co., Inc.**

Plaintiffs' petition to approve compromise of disputed claim is **continued to June 26, 2020, at 8:30 a.m. in Department 3**, located at the Historic Courthouse in Auburn, to be heard by the Honorable Michael W. Jones.

Plaintiffs' petition is incomplete. Although the petition states that the Settlement Agreement and Mutual Release of Claims is attached as Exhibit 11, no such attachment is provided. In addition, the petition fails to attach plaintiffs' fee agreement as required by section 18(a)(2), and omits a response to paragraph 18(c).

Plaintiffs may file an amended petition or supplemental declaration addressing the foregoing issues no later than June 23, 2020.

**16. S-CV-0043244 Jones, Lloyd vs. Gualco, Timothy**

This tentative ruling is issued by the Honorable Steven J. Howell. If oral argument is requested it shall be heard on **Wednesday, June 24, 2020 at 10:30 a.m. in Dept. 30.**

**Defendant's Motion to Declare Plaintiff a Vexatious Litigant**

**Ruling on Request for Judicial Notice**

Defendant's request for judicial notice is granted.

The court, on its own motion, also takes judicial notice of the entirety of the court file. Specifically, the court takes judicial notice of the declaration of Eric Brumfield, along with all attached exhibits, in support of defendant's original vexatious litigant motion filed on October 1, 2019.

### Ruling on Motion

The current motion comes before the court with a unique posture. The judgment for dismissal has already been entered in this case. Nonetheless, the court retains authority to hear the vexatious litigant request. (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1024-1025.) “[A] motion to declare a self-represented plaintiff a vexatious litigant deals with an ancillary issue and has no bearing on the finality of the judgment or dismissal.” (*Ibid.*) Thus, the ability to declare an individual a vexatious litigant survives dismissal of the action. (*Ibid.*)

The motion is granted. A party may be declared a vexatious litigant under the following circumstances: (1) the person, acting in pro per, has filed five or more actions within the last seven years that were either adversely decided against the person or were pending for at least two years without being brought to trial; (2) the person, acting in pro per, repeatedly attempts to relitigate litigation that has reached a final determination against the same defendants or involving the same claims; (3) a person, acting in pro per, repeatedly files unmeritorious pleadings or engages in other frivolous or unnecessary delay tactic; or (4) the person has previously been declared a vexatious litigant. (Code of Civil Procedure section 391(b)(1)-(4).) Defendant seeks relief under subsection (1), contending plaintiff has filed more than five actions within the last seven years that were adversely decided against plaintiff. Defendant submits seven dismissal judgments entered against plaintiff within the last year, which include following cases where plaintiff brought actions in propria persona:

- Placer Court Case No. SCV-43244, Jones v. Gualco
  - The complaint was filed on July 1, 2019. The judgment for dismissal was entered on January 10, 2020.
- Placer Court Case No. SCV-43246, Jones v. Tredinnick
  - The complaint was filed on July 17, 2019. The judgment for dismissal was entered on December 30, 2019.
- Placer Court Case No. SCV-43248, Jones v. Gualco
  - The complaint was filed on July 17, 2019. The judgment for dismissal was entered on December 30, 2019.
- Placer Court Case No. SCV-43707, Jones v. Hart
  - The complaint was filed on September 11, 2019. The judgment for dismissal was entered on March 5, 2020.
- El Dorado Court Case No. PC20190417, Jones v. Gualco
  - The complaint was filed on August 7, 2019. The judgment for dismissal was entered on January 14, 2020.
- El Dorado Court Case No. PCL20190561, Jones v. Addison
  - The complaint was filed on July 16, 2019. The judgment for dismissal was entered on January 14, 2020.
- Merced Court Case No. 19CV-01625
  - The complaint was filed on April 15, 2019. The judgment for dismissal was entered on January 23, 2020.

This evidence is sufficient to establish plaintiff's actions fall under Section 391(b)(1).

The court makes the determination that in self-represented plaintiff, Lloyd Jones, is a vexatious litigant under Code of Civil Procedure section 391. Mr. Jones must obtain prior court approval to file any new litigation where he is not represented by an attorney. (Code of Civil Procedure section 391.7.) The clerks shall forward a copy of this order to the Judicial Council so that Mr. Jones' name is added to the statewide vexatious litigant list.

**17. S-CV-0043437 Jones, Lloyd D. vs. Tziavaras, Nick**

This tentative ruling is issued by the Honorable Steven J. Howell. If oral argument is requested it shall be heard on **Wednesday, June 24, 2020 at 10:30 a.m. in Dept. 30.**

**Motion to Dismiss**

Defendant Nick Tziavaras moves to dismiss the action pursuant to Code of Civil Procedure section 581(f)(2).

Code of Civil Procedure section 581(f)(2) provides that the court may dismiss the complaint as to a defendant where "after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal." Defendant's demurrer to the complaint was sustained with leave to amend by order entered December 30, 2019. The order required plaintiff to file and serve an amended complaint on or before January 10, 2020. Plaintiff has not filed any amended complaint as of the date of this motion. Although plaintiff filed a notice of appeal on January 30, 2020, that appeal was dismissed on March 11, 2020, due to plaintiff's failure to timely file a Civil Case Information Statement.

Based on the foregoing, defendant's motion to dismiss is granted.

**18. S-CV-0043521 Bergendahl, Karen vs. Tahoe Yacht Club Foundation**

The application of Thierry V. Barkley, Esq. to appear as counsel *pro hac vice* is granted.

**19. S-CV-0044209 Retail Polishing Management, LLC vs. Kennady, Timothy**

The motion to compel and to deem requests for admissions admitted was dropped by the moving party.

**20. S-CV-0044485 Hansen, Daniel vs. R.G. Environmental Holdings, Inc.**

The motion for preliminary approval of class action settlement is continued to July 24, 2020, at 8:30 a.m. in Department 3 to be heard by the Honorable Michael W. Jones.

**21. S-CV-0044537 Graves, Lee, et al vs. Karfiol, Sylvan**

The motion for trial preference is granted. The court finds pursuant to Code of Civil Procedure section 36(a) that plaintiffs are over 70 years of age, have a substantial interest in the action as a whole, and that their health is such that preference is necessary to prevent prejudicing the party's interest in the litigation.

A case management conference is currently set for June 23, 2020. **Although calendar notes posted with respect to this hearing state that no appearance is required, the parties shall appear on June 23, 2020, at 10:00 a.m. in Department 40, in order to set the trial date.** The parties shall meet and confer in advance of the hearing regarding available trial dates within 120 days.

**22. S-CV-0044553 Marquez, Ana, et al - In Re the Petition of**

The petition to approve compromise of disputed claim of minor is **continued to July 24, 2020, at 8:30 a.m. in Department 3**, located at the Historic Courthouse in Auburn.

In seeking approval of the compromise of a minor's claim, petitioner must utilize the mandatory Judicial Council form MC-350. Cal. R. Ct., rule 7.101. Petitioner may file an amended petition no later than ten court days prior to the continued hearing date.

**23. S-PR-0009659 Rhoades, Donald Richard - In Re the Estate of**

The motion to be relieved as counsel by Marlene Sanborn and Sanborn Law, PC, is granted, effective upon the filing of proof of service of the court's signed order after hearing on petitioner Sandra Rhoades.

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